



Report to the Auburn City Council

Action Item	4
Agenda Item No.	
City Manager's Approval	

To: Honorable Mayor and City Council Members
From: Bob Richardson, City Manager
Date: June 25, 2012
Subject: Legal representation in *Labrie v. Board of Supervisors (Earp)*

The Issue

Should the Council ratify an agreement executed by the City Manager to retain the law firm of Porter Scott to defend the City's interests in the remaining issue in *Labrie v. Board of Supervisors (Earp)*?

Conclusions and Recommendations

The only issue remaining in the case brought by in the name of the City Clerk to require correction of the ballot arguments against Measure A is the authors' motion for attorneys' fees. Due to the City Attorney's withdrawal from representing the City Clerk and City in this action, I have hired new counsel to defend against the attorneys' fee motion. Porter Scott is a well-regarded litigation firm in Sacramento that has handled various matters for the City in the past. Stephen Horan, the attorney Porter Scott has designated to represent the City is a reputable and experienced litigator with experience in attorneys' fee motions. Accordingly, I retained Mr. Horan and I recommend the Council ratify his contract by minute order.

Discussion

In March of this year, the City Council authorized a lawsuit filed in the name of the City Clerk as the Elections Code requires, to obtain correction of false and misleading statements in ballot arguments proposed by the opponents of Measure A (*Labrie v. Board of Supervisors (Earp)*, Case No. SCV-0030835). After briefing by the parties on a shortened time frame, the Court decided on April 3, 2012, that it would not prevent the printing of the allegedly false or misleading statements, stating not that the statements were true, but that the very high standard of proof applicable to such actions had not been satisfied.

The authors of the ballot argument that opposed the lawsuit then sought their attorneys' fees. The hearing on their motion for attorneys' fees was set for Election Day, June 5, 2012. After the matter was entirely briefed, the City Attorney found it necessary to

withdraw from representing the City Clerk and the City in this matter. The parties continued the hearing to July 3, 2012 to accommodate a change in counsel.

Because any attorneys' fee award would be paid from the City's funds, the City has an interest in the remaining issue in this matter and requires representation. Therefore, the City Attorney recommended the City hire another firm to represent the City. In particular, I recommend the firm of Porter Scott for their skill, professionalism, and expertise in this area of the law. They have represented the City many times in the past and at present in tort liability matters under assignment from the City's risk pool.

I executed the attached retainer agreement subject to the Council's approval by minute action.

Alternatives and Financial Implications

We have discussed these matters in closed session and it is not appropriate to discuss them in open session, where they will aid the opposing parties in the suit.

Recommendations and Conclusion

Accordingly, I recommend you:

1. Review the attached agreement with Porter Scott to represent the City in *Labrie v. Board of Supervisors (Earp)*?
2. Waive full reading and approve by minute order the attached agreement with Porter Scott to represent the City.

If I can provide further advice or assistance in the meantime, please let me know.

Attachments: Agreement with Porter Scott

PORTER SCOTT
A Professional Corporation
350 University Avenue, Suite 200
Sacramento, CA 95825
TEL: 916.929.1481
FAX: 916.927.3706

June 8, 2012

ATTORNEY-CLIENT FEE AGREEMENT

PORTER SCOTT ("Attorney") and City of Auburn ("Client") hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. **CONDITIONS.** This Agreement will not take effect, and the Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the initial security deposit called for under Paragraph 4.

2. **SCOPE OF SERVICES.** Client hires Attorney to provide legal services in the following matter: *Labrie v. The Board of Supervisors, et al.*, Placer County Superior Court Case No. SCV 0030835. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in execution proceedings after judgment. Separate arrangements must be agreed to for those services. Services in any matter not described above will require a separate written agreement.

3. **CLIENT'S DUTIES.** Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney in providing necessary information and documents and will appear when necessary at legal proceedings.

4. **DEPOSIT.** Client agrees to pay Attorney an initial deposit of \$0. The initial security deposit will be held in trust and will not be used to pay the charges incurred unless said charges are 60 days or more in arrears. Once any charges are 60 days or more in arrears, the Client authorizes the Attorney to use the deposit to satisfy the then existing account balance. If an account never becomes 60 days in arrears, the deposit will be used to pay the final bill. If the security deposit is in excess of the final bill, then the final bill will be satisfied from the security deposit and the remaining balance will be refunded to the Client.

Attorney reserves the right to obtain further deposits up to a maximum of \$ N/A before a trial or arbitration date is set. Once a trial or arbitration date is set, Client shall pay all sums then owing and deposit the attorney's fees estimated to be incurred in preparing for and completing the

trial or arbitration as well as the jury fees or arbitration fees, expert witness fees and other costs likely to be incurred. These sums may exceed the maximum deposit.

Client agrees to pay all deposits after the initial deposit within N/A days of Attorney's request. Unless otherwise agreed in writing, any unused deposit at the conclusion of Attorney's services will be refunded.

5. LEGAL FEES & BILLING PRACTICES. Client agrees to pay by the hour at Attorney's prevailing rates for all time spent on Client's matter by Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

Partners	\$225.00
Associates	\$185.00
Paralegals	\$ 95.00
Law Clerks	\$ 95.00

The rates on this schedule are subject to change on 30 days written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client.

The time charged will include the time Attorney spends on telephone calls relating to Client's matter, including calls with Client, witnesses, opposing counsel or court personnel. The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceedings, each will charge for the time spent. Attorney will charge for waiting time in court and elsewhere and for travel time, both local and out of town. Time is charged in minimum units of one-tenth (.10) of an hour.

The time charged will be reasonable and total fees and costs shall not exceed \$5,000 until the City Council approves this agreement.

6. COSTS AND OTHER CHARGES.

(a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, messenger and other delivery fees, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees and other similar items. Except for the items listed below, all costs and expenses will be charged at Attorney's cost.

In-office photocopying	20¢ per page
Mileage	IRS rate

(b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney's personnel. Client will also be charged the hourly rates for the time legal personnel spend traveling.

(c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

Additionally, Client understands that if the matter proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of Client.

7. **BILLING STATEMENTS.** Attorney will send Client monthly statements for fees and costs incurred. Each statement will be payable within forty-five (45) days of its mailing date. Client may request a statement at intervals of no less than thirty (30) days. If Client so requests, Attorney will provide one within ten (10) days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.

8. **LIEN.** Client hereby grants Attorney a lien on any and all claims or causes of action that are the subject of the representation under this Agreement. The lien will be for any sums owing to Attorney at the conclusion of services performed. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise. The effect of such a lien is that Attorney may be able to compel payment of fees and costs from any such funds recovered on behalf of Client even if Attorney has been discharged before the end of the case. Because a lien may affect Client's property rights, Client may seek the advice of an independent lawyer of Client's choice before agreeing to such a lien. By initialing this Paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and - whether or not Client has chosen to consult such an independent lawyer - Client agree that Attorney will have a lien as specified above.

_____ (Client Initial Here)

_____ (Attorney Initial Here)

9. **DISCHARGE AND WITHDRAWAL.** Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Agreement, refusal to cooperate or to follow Attorney's advice on a material matter or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. When Attorney's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Attorney will, upon Client's request, deliver Client's file, and property in Attorney's possession unless subject to the lien provided in Paragraph 8 above, whether or not Client has paid for all services.

10. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Attorney shall not be a guarantee. Actual fees may vary from estimates given.

11. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

12. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

13. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them, or an oral agreement only to the extent that the parties carry it out.

14. EFFECTIVE DATE. This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY-EXECUTED DUPLICATE OF THIS AGREEMENT.

Dated: _____

ROBERT RICHARDSON, City Manager
Address: City Manager Office at City Hall
1225 Lincoln Way, Room 9
Auburn, CA 95603
Telephone: (530) 823-4211, Ext. 192

Dated: _____

PORTER SCOTT
A Professional Corporation

By _____
Stephen E. Horan